



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1998

Mr. Monty Waters
Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0542

Dear Mr. Waters:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112955.

The Texas Department of Health (the "department") received a request for updated information concerning the outbreak of Brainerd Diarrhea near Bonham, Texas. You have submitted the responsive information to this office for review. You claim that information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 81.046 and 161.0213 of the Health and Safety Code.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Chapter 81 of the Health and Safety Code, of which section 81.046 is a part, is commonly referred to as the Communicable Disease Prevention and Control Act. Under section 81.042, various individuals, including health professionals, school and child care administrators, and owners and managers of food handling or processing establishments, are required to make reports to the department of instances of suspected cases of "reportable diseases," including communicable diseases, and "health conditions." Section 81.046 of the Health and Safety Code provides in pertinent part:

¹We note that the department did not request a decision from this office within ten days of receiving the request for information, and, therefore, the requested information is presumed public. See Gov't Code §§ 552.301, .302. Nevertheless, we have considered the department's argument that the requested information is confidential by statute, because the presumption of openness is overcome by a showing that the information is made confidential by another source of law. Open Records Decision No. 150 (1977).

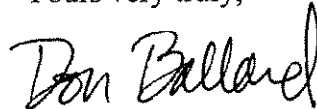
(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Open Records Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created by the department during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. You state that none of the statute's exceptions apply to the requestor. *See* Health & Safety Code § 81.046(c) and (d). You also indicate that the submitted "information relates to cases or suspected cases of diseases or health conditions and is not public. *See* Health & Safety Code § 81.003(1). You reference section 81.046(b). We agree that section 81.046(b) governs the release of this information. We therefore conclude that the department must withhold the documents you have submitted in their entirety.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 112955

Enclosures: Submitted documents

²Because we resolve your request under section 81.046, we need not address the applicability of section 161.0213 of the Health and Safety Code.

cc: Ms. Donna Harris
Paralegal for Lynn A. Grisham
Waltman & Grisham
3833 South Texas Avenue, Suite 150
Bryan, Texas 77802
(w/o enclosures)